



3. This civil action is governed by the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22.

4. EPA and Respondent have agreed to settle this civil action before the filing of a complaint, and, as authorized by 40 C.F.R. § 22.13(b), have executed this consent agreement pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3), to simultaneously commence and conclude this civil action upon issuance of a final order by the Regional Judicial Officer.

5. This consent agreement shall become effective on the date of issuance of the final order (Consent Agreement).

6. The parties to this Consent Agreement understand and agree that the Federal hazardous waste program in Montana is largely embodied in State law and regulations. Because the State regulations incorporate the Federal regulations by reference, and for the convenience of the parties, citations herein to the hazardous waste regulations are to the Code of Federal Regulations.

7. Respondent waives its right to a hearing under section 3008(b) of RCRA, 42 U.S.C. § 6928(b), on any issue of law or fact set forth in this Consent Agreement.

8. Respondent admits the jurisdictional allegations contained herein.

9. Respondent admits the specific factual and legal allegations herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. At all times relevant, Respondent was and is presently a Delaware corporation registered to conduct business in the State of Montana.

11. Respondent is a “person” within the meaning of section 1004(15) of RCRA and 40 C.F.R § 260.10.

12. From 1998 to the present, Respondent was owner and/or operator of a former elemental phosphorus production facility near Butte, Montana, located in Sections 23, 24, 25 and 26, Township 3 North, Range 9 West (Facility).

13. On January 14, 2004, a plea agreement was filed in the United States District Court for the District of Montana, Butte Division, in the matter of United States of America vs. Rhodia Inc., CR 03-29-BU-DWM (“Plea Agreement”). A sentencing hearing was held on April 29, 2004. The judge accepted the Plea Agreement and imposed the agreed upon sentence. In addition, the judge imposed one thousand (1000) hours of community service on Rhodia.

14. In the Plea Agreement Rhodia states that because Rhodia is guilty of two crimes, Rhodia pleads guilty to two counts that Rhodia knowingly stored and caused the storage of hazardous waste without a permit, specifically (a) ignitable crude phosphorus in the “clarifier”,

and (b) ignitable precipitator dust contaminated with elemental phosphorus and ignitable carbon brick contaminated with elemental phosphorus, without a permit, in violation of 42 U.S.C. § 6928(d)(2)(A), from on or about December 1998, until on or about August 2000.

15. In the Plea Agreement Rhodia agrees:

- a. to pay a fine of sixteen million, two hundred thousand dollars (\$16,200,000.00);
- b. To pay restitution of one million, eight hundred thousand dollars (\$1,800,000.00) to the State of Montana Department of Environmental Quality (MDEQ);
- c. to serve a period of probation of either five years, or until the activities required under the EPA-issued orders listed in subparagraph d(i) and d(ii) are completed, whichever is longer; and
- d. to perform comprehensive environmental investigations and remediation of contamination at, and migrating from, the Facility. It is expected that most of the investigation and clean up will be conducted pursuant to: (i) a previously existing unilateral order issued by EPA pursuant to section 7003 of RCRA, Docket No. RCRA-8-2000-07 (7003 Order), which addresses the two illegal storage units, (ii) an administrative order on consent issued by EPA pursuant to section 3008(h) of RCRA, Docket No. RCRA-08-2004-0001 (3008(h) Order), which became effective at sentencing, (iii) an administrative order on consent issued by EPA pursuant to section 7003 of RCRA, Docket No. RCRA 8-2004-0003 (7003 AOC), which addresses a

subsurface wastewater discharge pipe that runs from the operations area of the Facility to Silver Bow Creek (Creek), but was plugged in the late 1970's, and (iv) a memorandum of agreement between MDEQ and Rhodia (MOA) which outlines how the following materials will be addressed during MDEQ's implementation of a remedial action under the federal Comprehensive Environmental Response, Compensation and Liability Act, 40 U.S.C. § 9601, *et seq.* -- (A) the portion of the discharge pipe that may be in the Creek flood plain, and (B) slag materials (as defined in the MOA) at Parcel 26.

16. Respondent understands that, pursuant to the Plea Agreement, violations of the 7003 Order or the 3008(h) Order are violations of the conditions of probation and will be referred to the U.S. Probation Office to compel compliance with these Orders in and through the U.S. District Court during the period of probation.

17. The two crimes admitted to by Rhodia in the Plea Agreement are also civil violations of section 3005 of RCRA, 42 U.S.C. § 6925.

PENALTY

18. Pursuant to Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), EPA has considered the seriousness of the two violations of section 3005 of RCRA, Respondent's good-faith efforts to comply, and all other available information regarding the

illegal storage of hazardous waste, including, but not limited to, the terms of the Plea Agreement and investigative and remedial activities Rhodia is committed to undertaking at the Facility.

19. EPA has determined that it is appropriate to settle Respondent's civil RCRA liability for the two violations admitted herein, and for any other civil violation of RCRA (generation, transportation, treatment, storage, disposal or other handling requirements for hazardous waste) at the Facility, from the date Respondent became owner of the Facility through April 29, 2004, that could be alleged based on information known to EPA at the date of execution of this Consent Agreement, for no penalty.

GENERAL PROVISIONS

20. This Consent Agreement contains all terms of this civil settlement agreed to by the parties. It applies to and is binding upon EPA and Respondent, its officers, directors, employees, agents and all persons acting under or for Respondent.

21. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, including the Plea Agreement, the 7003 Order and the 3008(h) Order.

22. This Consent Agreement, upon incorporation into a final order by the Regional

Judicial Officer and full satisfaction by the parties, shall be a complete, full and final civil settlement of the specific violations alleged herein.

23. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to execute this Consent Agreement therein binding the parties to its terms and conditions.

24. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Consent Agreement.

SO AGREED AND CONSENTED TO BY:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
Complainant.

Date: 6/29/04

By: Michael T. Risner

Michael T. Risner, Director
David Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 6-29-04

By: Marvin H. Frye for/

Sharon L. Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

RHODIA, INC.,
Respondent

Date: 6/23/04

By: SIGNED

Daniel Bersanti
Plant Manager

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **RHODIA, INC., DOCKET NO.: RCRA-08-2004-0006** was filed with the Regional Hearing Clerk on July 1, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Chuck Figur, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on July 1, 2004, to:

Kenneth M. Kastner, Esq.
Hogan & Hartson LLP
555 13th Street, NW
Washington, DC 20004

and to

Dan Bersanti
Rhodia Silver Bow Plant
P.O. Box 3146
Butte, MT 59702

July 1, 2004

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON JULY 1, 2004.**